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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 MIGUEL ANGEL CANO,  
15 Defendant.  
16

Case No.: 16-cr-01770-BTM

**ORDER DENYING MOTION TO  
SUPPRESS AND MOTION FOR  
RETURN OF PROPERTY**

17 Presently before the Court are Defendant's motion to suppress and motion  
18 for return of property. The Court held an evidentiary hearing on these matters on  
19 October 25, 26 and 31, 2016. For the reasons discussed below, Defendant's  
20 motions are **DENIED**.  
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22 **I. FACTUAL BACKGROUND**

23 On July 25, 2016 at approximately 6:30 a.m., Defendant, Miguel Angel  
24 Cano, applied for entry to the United States at the San Ysidro Port of Entry  
25 ("POE"). A Customs and Border Protection ("CBP") officer conducted a primary  
26 inspection of Defendant and his pick-up truck. The CBP officer subsequently  
27 referred Defendant to secondary inspection.  
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During secondary inspection, a dog alerted to the spare tire located

1 underneath the bed of the truck. Secondary officers handcuffed Defendant  
2 shortly thereafter. Defendant was taken to the security office where he was  
3 handcuffed to a bench. CBP officers cut the spare tire open and found  
4 approximately 16.52 kilograms of cocaine. Defendant was subsequently placed  
5 under arrest.

6 After the cocaine was found, CBP officers called the Homeland Security  
7 Investigations (“HSI”) office, which dispatched Special Agents (“SA”) Petonak  
8 and Medrano to investigate. Upon arriving at the POE, SA Petonak spoke to the  
9 seizing CBP officers, inspected Defendant’s vehicle and property, and reviewed  
10 Defendant’s crossing records. SA Petonak also did a cursory inspection of  
11 Defendant’s cell phone to look for relevant text messages and recent calls. SA  
12 Medrano conducted a “logical download” of Defendant’s cell phone using  
13 Cellebrite technology. A “logical download” has the capability of downloading  
14 text messages, contacts, call logs, media, and application data, though not  
15 messages contained within the applications themselves. He also took notes of  
16 incoming and outgoing calls. He related his findings to SA Petonak after his  
17 interview of Defendant.

18 At around 9:50 a.m., SA Petonak began his interview of Defendant. SA  
19 Petonak advised Defendant of his *Miranda* rights and obtained a written waiver of  
20 them. Defendant agreed to speak to SA Petonak without an attorney present.  
21 During the interview SA Petonak asked Defendant about his recent crossing  
22 history and the reason for his recent move to Mexico. Defendant’s post-*Miranda*  
23 interview ended at about 10:20 a.m. Defendant was transported to the  
24 Metropolitan Correctional Center (“MCC”) in San Diego and booked during the  
25 5:30 p.m. booking window. The following day, on July 26, 2016, Defendant  
26 made his initial appearance before Judge Stormes.

27 On August 5, 2016, Judge Adler granted the government a search warrant  
28 for Defendant’s cell phone and ordered that it be executed by August 19, 2016.

## **II. DISCUSSION**

Defendant moves to suppress all evidence derived from the search of his cell phone at the POE, contending that his Fourth Amendment rights were violated because the agents searched his cell phone without a warrant. He also petitions the Court for the return of his cell phone under Federal Rule of Criminal Procedure 41(g). Lastly, Defendant argues that his statements should be suppressed as an appropriate remedy for a Federal Rule of Criminal Procedure Rule 5(a) violation. The Court addresses each argument below.

### **A. Search of Defendant's Cell Phone at the POE**

Defendant argues that the agents' search of his cell phone on July 25, 2016 does not fall into any recognized exceptions to the Fourth Amendment's warrant requirement. Defendant relies on *Riley v. California*, \_\_U.S.\_\_, 134 S. Ct. 2473 (2014), to argue that the search incident to arrest doctrine does not apply. He further argues that the search does not fall within the border search exception to the Fourth Amendment because its purpose was to further the agents' investigation, rather than to prevent the entry of unwanted persons or contraband. The Government submits that *United States v. Cotterman*, 709 F.3d 952 (9th Cir. 2013) (en banc), supports the "logical search" of Defendant's cell phone—regardless of whether it is deemed a cursory or forensic search.

#### **1. Search Incident to Arrest Exception**

In *Riley*, the Supreme Court held that police officers must get a warrant before searching a cell phone seized incident to arrest. 134 S. Ct. at 2495. Defendant argues that because he was already arrested when the agents arrived at the POE, the warrantless search of his phone was performed as a search

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1 incident to arrest and was impermissible under *Riley*.

2       However, the search incident to arrest doctrine is one of numerous  
3 exceptions to the Fourth Amendment's warrant requirement. In fact, even the  
4 Supreme Court in *Riley* recognized that although "the search incident to arrest  
5 exception does not apply to cell phones, other case-specific exceptions may still  
6 justify a warrantless search of a particular phone." *Riley*, 134 S. Ct. at 2494.  
7 Though the Supreme Court did not specifically address the border search  
8 exception, *Riley* does not preclude the application of such doctrine.

## 9       **2. Border Search Exception**

10       Border searches have long been recognized as a narrow exception to the  
11 Fourth Amendment's warrant requirement. See *Cotterman*, 709 F.3d at 956.  
12 Courts have repeatedly held that searches performed at the border, pursuant to  
13 the longstanding right of the sovereign to protect itself by stopping and examining  
14 persons and property crossing into the United States, are "reasonable simply by  
15 virtue of the fact that they occur at the border." *Cotterman*, 709 F.3d at 960.  
16 However, border searches are not without limits. *Id.* "Even at the border,  
17 individual privacy rights are not abandoned but balanced against the sovereign's  
18 interests." *Id.*

### 19       **i. Purpose of the Search**

20       Defendant submits that the justification for a border search exception,  
21 preventing the entry of unwanted persons or contraband, is inapplicable here.  
22 Defendant argues that because he was already in custody, and the drugs and his  
23 phone were seized before the agents arrived at the POE, the agents' search of  
24 his phone was "investigatory" in nature. That is, they performed the search to  
25 gather evidence in an ongoing criminal investigation. Defendant thus attempts to  
26 draw a line between searches that are performed for the purpose of preventing  
27 the entry of unwanted persons or things, like those at issue in *United States v.*  
28 *Arnold*, 533 F.3d 1003, 1009 (9th Cir. 2008) and *Cotterman*, and "investigatory"

1 searches.

2        Though not framed as an inquiry into the actual motivations of the agents,  
 3 Defendant's argument is effectively seeking that the Court give weight to the  
 4 agents' subjective intent and motivations behind their search. However, courts  
 5 have repeatedly held that the Fourth Amendment's reasonableness analysis is  
 6 "predominately an objective inquiry." *Ashcroft v. Al-Kidd*, 563 U.S. 731, 736  
 7 (2011). In upholding a "pre-text stop," the Supreme Court in *Whren v. United*  
 8 *States*, 517 U.S. 806, 813 (1996), reaffirmed the principle that "[s]ubjective  
 9 intentions play no role in ordinary, probable-cause Fourth Amendment analysis."  
 10 There, police officers discovered drugs after allegedly conducting a pretextual  
 11 traffic stop. *Id.* at 808–809. The Supreme Court rejected the argument that  
 12 "ulterior motives can invalidate police conduct justified on the basis of probable  
 13 cause" and ultimately upheld the temporary detention of the defendant upon  
 14 probable cause that he had violated a traffic law. *Id.* at 812. It stated: "[n]ot only  
 15 have we never held, outside the context of inventory search or administrative  
 16 inspection . . . , that an officer's motive invalidates objectively justifiable behavior  
 17 under the Fourth Amendment; but we have repeatedly held and asserted the  
 18 contrary." *Id.*

19        The Supreme Court has only recognized two limited exceptions to this  
 20 general rule: 1) special-needs search cases<sup>1</sup>; and 2) administrative-search  
 21 cases<sup>2</sup>. See *Al-Kidd*, 563 U.S. at 736; see also *City of Indianapolis v. Edmond*,

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 24 <sup>1</sup> The Supreme Court has upheld "suspicionless searches where the program was designed to serve 'special  
 25 needs,' beyond the normal need for law enforcement." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000).  
 26 See, e.g., *Veronica Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (finding that "special needs" exist in the public  
 27 school context and upholding random drug testing of student-athletes); *Nat'l Treasury Emps. Union v. Von Raab*  
 28 489 U.S. 656 (1989) (upholding the testing of employees directly involved in drug interdiction or required to carry  
 firearms); *Skinner v. Ry. Labor Execs.' Assn.*, 489 U.S. 602 (1989) (upholding the toxicologist testing of railroad  
 employees involved in train accidents or found to be in violation of particular safety regulations).

<sup>2</sup> See, e.g., *New York v. Burger*, 482 U.S. 691 (1987) (holding that the State's authorization of warrantless  
 inspections of junkyards, conceded for the purpose of uncovering criminality, was not unconstitutional); *Camara*  
*v. Mun. Court of City and Cnty. of San Francisco*, 387 U.S. 523 (holding that administrative searches by municipal  
 health and safety inspectors when authorized and conducted without warrant procedure, lack traditional

531 U.S. 32, 37 (2000) (holding that “Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion may be invalid if the scheme as a whole “pursue[s] primarily general crime control purposes.”). Apart from those cases, the Supreme Court has “almost uniformly rejected invitations to probe subjective intent.” *Al-Kidd*, 563 U.S. at 737. As the Supreme Court phrased the inquiry, when determining whether a search or seizure is reasonable under the Fourth Amendment,” we ask whether “the circumstances, viewed objectively, justify the challenged action.” *Id.* at 736. If so, then that action was reasonable “‘whatever the subjective intent’ motivating the relevant officials.” *Id.* (quoting *Whren*, 517 U.S. at 814).

As such, border search cases do not turn on the purpose or motivation behind the search. Rather, they focus on the degree of intrusiveness in light of the sovereign’s interest at the border. In *United States v. Hsi Heui TSAI*, 282 F.3d 690, 694 (9th Cir. 2002), the Ninth Circuit specifically addressed whether the alleged investigative purpose of a search conducted at the border took it outside the scope of a “routine” border search. There, the defendant had flown into Hawaii from Guam. *Id.* at 694. The defendant argued that because the INS inspector knew that he was suspected of criminal activity in Guam, the search of his briefcase was conducted for purposes of criminal investigation, not as a “routine” border search. *Id.* The Ninth Circuit reinforced that “[t]he ‘critical factor’ in determining whether a border search is “routine” is the degree of intrusiveness it poses.” *Id.* While acknowledging that there are some cases like *Edmond*, in which subjective motivation is not wholly irrelevant, the Ninth Circuit held this case was not one of them. *Id.* at 695. It therefore held that the search of the defendant’s briefcase was reasonable as a routine border search notwithstanding the INS inspector’s investigative purpose. *Id.* at 696.

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safeguards which Fourth Amendment guarantees to individuals).



1 A review of Ninth Circuit cases specifically addressing digital searches at  
2 the border also reveals that the subjective motivation behind a search does not  
3 “serve to impose a warrant requirement that ordinarily does not exist at the  
4 border.” *Id.* at 694. In *Arnold*, the Ninth Circuit held that warrantless searches of  
5 laptops or other personal electronic storage devices at the border did not require  
6 reasonable suspicion. *Id.* at 533 F.3d 1003. There, the defendant was stopped  
7 by customs officials at the Los Angeles International Airport as he returned from  
8 a trip to the Philippines. *Id.* at 1005. He was asked by the customs officers to  
9 boot his laptop up and they proceeded to look through two folders of images on  
10 his desktop. *Id.* The folders contained two nude photos, which led the officers to  
11 further examine the computer. *Id.* The computer search revealed child  
12 pornography. *Id.* In determining whether this search required reasonable  
13 suspicion, the Ninth Circuit turned to the well-grounded border search doctrine.  
14 *Id.* at 1007. The court held that the search of the laptop, like that of a gas tank,  
15 did not “implicate the same ‘dignity and privacy’ concerns as ‘highly intrusive  
16 searches of the person.’” *Id.* at 1008 (quoting *United States v. Flores-Montano*,  
17 541 U.S. 149, 152 (2004)). No reasonable suspicion was therefore required.

18 The Ninth Circuit in *Cotterman* narrowed the holding in *Arnold* and outlined  
19 a two-tiered approach for determining what level of suspicion is required for  
20 digital border searches. 709 F.3d at 961. There, agents seized the defendant’s  
21 laptop at the U.S.-Mexico border in response to an alert of a child molestation  
22 conviction. *Id.* at 957. The agents conducted an initial search of his laptop which  
23 revealed no incriminating material. *Id.* at 957–58. Only after the defendant’s  
24 laptop was shipped away and subjected to a comprehensive forensic  
25 examination were images of child pornography discovered. *Id.* at 958. The  
26 Court held that, under *Arnold*, the initial cursory search of the defendant’s  
27 electronic devices at the border was reasonable even without particularized  
28 suspicion. *Id.* at 960. However, given the intrusive nature of a forensic

1 examination of the electronic device, to justify the search as reasonable, it had to  
2 be supported by reasonable suspicion. *Id.* at 968.

3 The Ninth Circuit's holding in *Cotterman* did not depend on whether the  
4 search was "investigatory" in nature. It instead rested on the "comprehensive  
5 and intrusive nature of a forensic examination." *Id.* at 962. Defendant cites no  
6 authority to support his proposition that if the search is "investigatory," it ceases  
7 being a border search. In fact, several courts in this District have refused to  
8 decide cases involving searches at the border on such a distinction. *See United*  
9 *States v. Ramos*, No. 16-cr-467 JM, 2016 WL 3552140, at \*13 (S.D. Cal. June 3,  
10 2016) (finding that an agent's manual search of the defendant's phone  
11 approximately an hour and a half after his arrest was reasonable under the  
12 border search exception); *see also United States v. Caballero*, No. 15-cr-2738,  
13 2016 WL 1546731-BEN, at \*4 (S.D. Cal. Apr. 14, 2016) (applying *Cotterman* and  
14 finding that the warrantless, post-arrest cursory search of the defendant's cell  
15 phone was permissible under the border search doctrine); *see also United*  
16 *States v. Hernandez*, No. 15-cr-2613, 2016 WL 471943-GPC, at \*3 (S.D. Cal.  
17 Feb. 8, 2016) (refusing to make a distinction between "investigatory" border  
18 searches and "protecting the United States' sovereign integrity by excluding  
19 unwanted persons or things.").

20 It is also worth noting that here, there is evidence that the agents were  
21 motivated, at least in part, by the desire to prevent the entry of additional  
22 contraband into the country. At the hearing, both SA Medrano and SA Petonak  
23 testified that they searched Defendant's phone, in part to prepare for Defendant's  
24 interview, but also to look for communications that might lead to co-conspirators  
25 and messages from co-conspirators that could reveal other drug loads being  
26 smuggled. Thus, even if the Court were to take into account the subjective  
27 intentions of the agents, the search is nevertheless a border search. *See, e.g.,*  
28 *Ramos*, 2016 WL 3552140, at \*5 (noting that though the border search may have



1 not uncovered additional information regarding the defendant's wrongdoing, it  
2 may have uncovered more information about more contraband entering into the  
3 country at that time or the location where the defendant was to drop off or  
4 transfer the drugs).

5 **ii. Reasonable Under *Arnold* and *Cotterman***

6 Therefore, the issue here is whether the searches of Defendant's cell  
7 phone at the border were reasonable under *Cotterman*. The Court holds that  
8 they were. SA Petonak's warrantless search of Defendant's cell phone is clearly  
9 permissible under *Arnold*. Like the manual search in *Arnold*, Agent Petonak here  
10 performed a cursory search of Defendant's phone.

11 SA Medrano's "logical" search of the phone is also lawful under the border  
12 search doctrine, but merits further discussion. In addition to performing a manual  
13 search of the phone, SA Medrano also used Cellebrite technology to conduct a  
14 "logical download" of the cell phone. The Government contends that this does  
15 not constitute a forensic search, and as such, no reasonable suspicion was  
16 required. In the alternative, the Government argues that even if the Court were  
17 to characterize the search as "forensic," *Cotterman* nevertheless supports it  
18 because the agents had reasonable suspicion and even probable cause.

19 Here, the Court need not decide whether the use of Cellebrite technology  
20 transforms it from a mere "cursory search" to a "forensic search," as the "logical  
21 download" was supported by at least reasonable suspicion. SA Medrano  
22 searched through Defendant's phone after CBP officers found approximately  
23 16.52 kilograms of cocaine in the spare tire of his truck. This not only amounts to  
24 reasonable suspicion, but gives rise to probable cause. The agents had reason  
25 to believe that Defendant used his cell phone as an instrumentality of the crime.  
26 Accordingly, SA Medrano's search of Defendant's phone using Cellebrite  
27 technology was reasonable under the border search exception.

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### 3. Good Faith Exception

Even if the search of Defendant's phone does not fall within the border search exception, the evidence is nevertheless admissible because the good faith exception to the exclusionary rule applies here.

Not every Fourth Amendment violation demands applying the exclusionary rule. *Herring v. United States*, 555 U.S. 135, 140 (2009). "[E]vidence should be suppressed 'only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.'" *United States v. Schesso*, 730 F.3d 1040, 1050–51 (9th Cir.2013) (quoting *Herring*, 555 U.S. at 143).

Here, there is both Supreme Court and Ninth Circuit law approving the well-grounded border search doctrine. Specifically, *Cotterman* remains good law and permits agents to search electronic devices at the border without a warrant. At the hearing, Defendant argued that the good faith exception does not apply because *Riley's* warrant requirement is established law. However, as already discussed above, *Riley* did not address the border search exception, but instead based its holding on the search incident to arrest exception. The Court is aware of no case, post-*Riley*, that applies its holding to searches of cell phones conducted at the border. In fact, as already noted, there are several courts in this District that have upheld a warrantless, post-arrest, search of a defendant's cell phone pursuant to the border search doctrine. The Court therefore finds that the agents in this case searched Defendant's cell phone in reliance on the border search doctrine. The good faith exception to the exclusionary rule thus applies.

Defendant's motion to suppress evidence derived from the search of his cell phone at the POE is therefore **DENIED**.

### B. Return of Property Under Rule 41(g)

Defendant moves for the return of his cell phone pursuant to Federal Rule

1 of Criminal Procedure 41(g), which “provides a mechanism by which a person  
2 may seek to recover property seized by federal agents.” *Ordonez v. United*  
3 *States*, 680 F.3d 1135, 1137 (9th Cir. 2012). The text of the rule states:

4 A person aggrieved by an unlawful search and seizure of property or by  
5 deprivation of property may move for the property’s return. The motion  
6 must be filed in the district where the property was seized. The court must  
7 receive evidence on any factual issue necessary to decide the motion. If it  
8 grants the motion, the court must return the property to the movant, but  
may impose reasonable conditions to protect access to the property and its  
use in later proceedings.

9 Fed. R. Crim. P. 41(g). Unless “the property in question is no longer needed for  
10 evidentiary purpose, either because trial is complete, the defendant has pleaded  
11 guilty, or. . . the government has abandoned its investigation,” the movant bears  
12 the burden of demonstrating that he or she is entitled to lawful possession of the  
13 property. *United States v. Martinson*, 809 F.2d 1364, 1369 (9th Cir. 1987);  
14 *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, n. 2 (9th Cir.  
15 2010).

16 Here, as discussed above, Defendant’s cell phone was not subject to an  
17 unlawful search and seizure. Defendant argues that because the government  
18 has already seized the data from his phone, it no longer needs the physical  
19 phone. Nevertheless, the cell phone serves an evidentiary purpose as the case  
20 remains open and it was seized as an alleged instrumentality of the charged  
21 crime. As such, Defendant’s motion for return of his cell phone is **DENIED**  
22 **WITHOUT PREJUDICE**.

### 23 24 **C. Suppression of Statements Under Rule 5**

25 Defendant argues that his statements must be suppressed because the  
26 Government delayed his initial appearance before a Magistrate Judge in violation  
27 of Federal Rule of Criminal Procedure 5.

28 Rule 5 of the Federal Rules of Criminal Procedure states that, “[a] person

1 making an arrest within the United States must take the defendant *without*  
 2 *unnecessary* delay before a magistrate . . .”. Fed. R. Crim. P. 5(a)(1)(A)  
 3 (emphasis added). Unnecessary delay “must be determined in light of all the  
 4 facts and circumstances of the case.” Fed. R. Crim. P. 5 advisory committee’s  
 5 notes. The *McNabb-Mallory* rule “generally render[s] inadmissible confessions  
 6 made during periods of detention that violate the prompt presentment  
 7 requirement of [Rule] 5(a).” *Corley v. United States*, 556 U.S. 303, 303 (2009).  
 8 In response to the application of *McNabb-Mallory* in some federal courts,  
 9 Congress enacted 18 U.S.C. § 3501(c). *See Corley*, 556 U.S. at 322. Section  
 10 3501(c), provides that:

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 12 In any criminal prosecution by the United States . . . , a confession  
 13 made . . . by a defendant therein, while such person was under arrest  
 14 . . . , shall not be inadmissible solely because of delay in bringing  
 15 such person before a magistrate judge . . . if such confession is found  
 16 by the trial judge to have been made voluntarily . . . and if such  
 17 confession was made . . . within six hours immediately following his  
 18 arrest . . . [this six-hour time limit] shall not apply in any case in which  
 19 the delay in bringing such person before magistrate judge . . . is  
 20 found by the trial judge to be reasonable considering the means of  
 21 transportation and the distance to be traveled to the nearest available  
 22 such magistrate judge or other officer.

23 § 3501(c). In interpreting section 3501, the Supreme Court in *Corley* held that it  
 24 modified *McNabb-Mallory*, without supplanting it. *Id.* at 322. The Supreme Court  
 25 established a two-part test for applying the *McNabb-Mallory* rule in light of the  
 26 six-hour safe harbor period in section 3501(c). *Id.* at 322; *see also United States*  
 27 *v. Pimental*, 755 F.3d 1095, 1101 (9th Cir. 2014) (applying the two-part test  
 28 established in *Corley*). First, a district court must determine “whether the  
 defendant confessed within six hours of arrest (unless a longer delay was  
 ‘reasonable considering the means of transportation and the distance to be  
 traveled to the nearest available [magistrate judge]’).” *Id.* If the confession falls

1 within the six-hour period, “it is admissible. . . so long as it was ‘made voluntarily  
 2 and . . . the weight to be given it is left to the jury.’” *Id.* If the defendant,  
 3 however, made the confession before presentment and beyond six hours, a court  
 4 must find “whether delaying that long was unreasonable or unnecessary under  
 5 the *McNabb-Mallory* cases, and if it was, the confession is to be suppressed.” *Id.*

6 Defendant cites to *Pimental* to argue that his presentment on the day  
 7 following his arrest violated Rule 5 and, as such, the statements he made before  
 8 presentment should be suppressed. The defendant in *Pimental* was arrested on  
 9 a Friday morning at the San Ysidro POE, but was not presented before a  
 10 Magistrate Judge until the following Tuesday. 755 F.3d at 1098–99. There, the  
 11 defendant made the incriminating statements more than six hours after his arrest.  
 12 *Id.* at 1101. Because the section 3501(c) safe harbor did not apply, the Ninth  
 13 Circuit’s analysis turned on whether the delay was “unreasonable or unnecessary  
 14 under the *McNabb-Mallory* cases.” *Id.* The Ninth Circuit ultimately held that the  
 15 delay was unnecessary and reversed the district court’s denial of the defendant’s  
 16 motion to suppress. *Id.* at 1104.

17 Defendant argues that his case “is on all fours with” *Pimental*, yet he  
 18 ignores one crucial distinguishing fact. Here, Defendant made the statements at  
 19 approximately 9:50 a.m.<sup>3</sup>—less than six hours after being arrested. Under Ninth  
 20 Circuit law, because the statements were made within the six-hour safe harbor,  
 21 they are admissible so long as they were made voluntarily. As determined by the  
 22 Court during the hearing on this motion, Defendant knowingly, intelligently and  
 23 voluntarily waived his rights and proceeded to make the statements at issue.

24 Moreover, the Court does not find that there have been a series of Rule 5  
 25 violations for the purpose of obtaining confessions so as to warrant suppression

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 28 <sup>3</sup> The parties dispute the time of Defendant’s arrest. Defendant argues that he was arrested at 6:45 a.m. The Government contends that he was arrested at 8:00 a.m. The Court need not determine the time of arrest because it is undisputed that the statements were made within six-hours of being arrested at either time.

1 of Defendant's statements in this case.

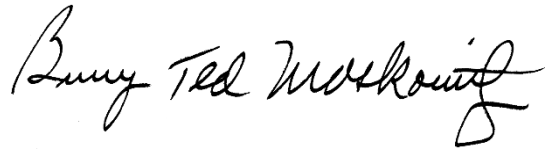
2 Consequently, Defendant's motion to suppress his statements is **DENIED**.

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4 **III. CONCLUSION**

5 For these reasons, Defendant's motion to suppress and motion for return of  
6 property are **DENIED**.

7 **IT IS SO ORDERED.**

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9 Dated: November 23, 2016



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11 Barry Ted Moskowitz, Chief Judge  
12 United States District Court  
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